

Panaji, 7th October, 2021 (Asvina 15, 1943)

SERIES II No. 28

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

### GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

#### Order

No. 1/8/15/2021-22/D.Agri/1010

Government is pleased to depute Shri Satyavan K. Dessai, Agriculture Officer (extension) against the post of the Secretary of the Goa Agricultural Produce and Live Stock Marketing Board in the Pay Scale of PB-III, Rs. 15,600-39,100+Rs. 4,800 which is at Level-8 of 7th Pay Matrix.

The deputation of Shri Satyavan K. Dessai against the post of the Secretary of the Goa Agricultural Produce and Live Stock Marketing Board shall initially for a period of two years with effect from the date of taking over the charge and shall be governed by the standard terms of the deputation as contained in the O.M. No. 13/4/74-PER dated 12-02-1999 and amended from time to time.

He shall also hold the additional charge of the post of the Agriculture Officer (extension) in addition to this own duties, the post presently handled by him at the Head Quarters until further order.

He shall join his new place of posting with immediate effect.

This is issued with the concurrence of the Government vide Entry No. 6008/F dated 21-09-2021.

By order and in the name of the Governor of Goa.

*Nevil Alphonso*, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 21st September, 2021.

#### Order

No. 8/86/2021-22/D.Agri/1053

Read: Memorandum No. 1/3/16/2021-22/D.Agri/840 dated 24-08-2021.

On recommendation of the Goa Public Service Commission as conveyed vide letter No. COM/I/5/2(1)/2020/191 dated 03-08-2021, the Governor of Goa is pleased to appoint Shri Viraj Shaba Fatto Dessai against the post of Mechanical Cultivation Officer on regular basis to Group "B" Gazetted under the Government of Goa, in the Level-7 of the Pay Matrix in the 7th Pay Commission and post him at the Mechanical Cultivation Office, Margao. The pay will be fixed in accordance with the Central Civil Service (Revised pay) Rules, 2016 with immediate effect.

The candidate has been declared medically fit by the Medical Board, Goa, Medical College, Bambolim-Goa vide their letter No. 4/105/85-H/GMC/2021/408 dated 21-09-2021. The letter to verify his character and antecedents has been sent to the concerned District Magistrate, the same will be communicated when received.

The candidate shall be on probation for a period of two years with effect from the date of his joining.

The pay and allowances of the above candidate shall be debited to the Budget Head: 2401-Crop Husbandry, 00, 102-Foodgrain Crops, 02-Crop Production & Input Management, 01-Salaries.

The above candidate shall join the duties within the period of 15 days from the date of receipt of this order.

His appointment shall be subject to the verification of the genuineness of Education qualification certificates and Caste certificate (if applicable) which will have to be produced by him within 03 months from the date of joining the service.

By order and in the name of the Governor of Goa.

*Nevil Alphonso*, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 28th September, 2021.

**Corrigendum**

No. 1/22/112/2021-22/D.Agri/1028

Read: Order No. 1/22/112/2021-22/D.Agri/913  
dated 07-09-2021.

The "Group" mentioned against the name of Dr. Sameer Narayan Sawant, Subject Matter Specialist (Animal Science) at para 1 of the above referred order may be read as " 'A' Gazetted" instead of 'B' Gazetted.

The rest of the contents of the said order remain unchanged.

By order and in the name of the Governor of Goa.

*Nevil Alphonso*, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 24th September, 2021.

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**Department of Co-operation**

Office of the Registrar of Co-operative Societies

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**Order**

No. 20/3/(11)/Elec/BOD/CDSC/RCS/CZ/20/1787

Read: Letter No. 13/600/2021/HSG/ARCS/CZ/181  
dated 19-05-2021 received from the Asstt.

Registrar of Co-op. Societies, Central Zone, Panaji-Goa to grant exemption to the provision of Section 59(4) in terms of Section 126A of the Goa Co-operative Societies Act, 2001 to Casa Del Sol Co-operative Housing Society Ltd., Opp. Goa Marriot Resort, Miramar, Panaji-Goa.

In pursuance of the powers vested under Section 126A of the Goa Co-operative Societies Act, 2001, the Government of Goa hereby exempts Casa Del Sol Co-operative Housing Society Ltd., Opp. Goa Marriot Resort, Miramar, Panaji-Goa from the provisions of Section 59(4) of the Goa Co-operative Societies Act, 2001 so as to enable Casa Del Sol Co-operative Housing Society Ltd., Miramar, Panaji-Goa to constitute its full fledged Board of Directors.

The exemption so granted shall be valid for a period of three months or until one vacant post of the Board of Director is duly filled in whichever is earlier.

By order and in the name of the Governor of Goa.

*Arvind B. Khutkar*, Registrar & ex officio Joint Secretary (Co-operative Societies).

Panaji, 22nd September, 2021.

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**Department of Education, Art & Culture**

Directorate of Archives & Archaeology

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**Notification**

No. 5/138/Empanelment/2021-22/DAA-1294

Sub.: Empanelment of Private Portuguese Translators

Sanction of the Government is hereby conveyed to Empanel of following for the translation of various documents from Portuguese of English and vice-versa. The Portuguese documents of this Directorate shall be referred to the below mentioned Translators Empanelled by the Directorate of Archives & Archaeology. Translations of the aforesaid Portuguese documents carried out by the following Translators shall be solely considered for any legal matters.

No.	Name	Address
01/2021	Adv. Roque Orlando Costa	Near Babu Naik Bldg. Opp. Hayat Restaurant, Aquem Alto-Margao 403601 Contact: 9818542579.
03/2021	Saadia Helena De S. A. Dias Furtado	H. No. 759, Dandevaddo Chinchinim, Salcete, Goa 403715 Contact: 9420165901.
04/2021	Adv. Joaquim Jawaharlal Vivekananda Pinheiro	R-11, Marigold CHS Ltd. Chabdravaddo, Fatorda Margao-Goa 403602 Contact: 9404470294.
05/2021	Ruy Mascarenhas	Lotus Florists Pelican Building, Opp. Lohia Maidan Margao Contact: 7517688026.

1	2	3
07/2021	Adv. Mussa Aga	Plot No. 38, Sagar Co-op. Housing Society Pvt. Ltd., University Road, Dona Paula, Tiswadi, 403004 Contact: 9890606221.
08/2021	Adv. Alexandre J. P. Fernandes	H. No. E-220 Vaddy Mercedes, Santa Cruz, Tiswadi Contact: 9405220354.
09/2021	Adv. Maria Helena Clotildes Fernandes	St. Agostinho, Marod, Lane 3, St. Cruz, Ilhas-Goa Contact: 9881404813.
10/2021	Maria Antonieta da Cruz Fernandes	H. No. 160, Near St. Sebastian Chapel Fontainhas, Panaji-Goa 403001 Contact: 9823132582.
13/2021	Mathias Xavier Vaz	H. No. 1023, First Ward, P. O. Santa Cruz, Tiswadi-Goa
14/2021	Ulhas K. Prabhudessai	H. No. 572/A, Taki-Xeldem, Quepem, Goa 403705 Contact: 9420594677/9545554677.
15/2021	Adv. Tolentino Antonio Colaco	H. No. 221, Avedem, Quineabhath, Quepem-Goa Contact: 9822389711.
16/2021	Adv. Ainoddin Aga	H. No. 197, Opp. Court, Valpoi-Goa 403506 Contact: 7304852077/9767349122.
18/2021	Aurobindo Jose Xavier Couto	H. No. 326, Edlen, Goncoi, Aldona, Bardez-Goa 403508 Contact: 899454597.
19/2021	Adv. Audrey E. Vales	Villa Viola, 137/B, Holy Cross-Colony, Chicalim, Goa 403711 Contact: 9823092542/8552884485.

The rate of the translation as approved by the Government and concurred by the Finance Department vide their FMS No. 1400074760 dated 31-10-2020 is Rs. 1.75 (One rupee and seventy five paisa) per word from the source text for the handwritten document and Rs. 1.25 (one rupee and twenty five paisa) per word from the source text for the typed document upto the ceiling of Rs. 350 per page and the Portuguese Translators empanelled by the Directorate of Archives & Archaeology shall be liable to contribute Rs. 35 (Rupees thirty five only) per page towards the state along with a copy of the translation of every document done.

This order is issued with the approval of the Government vide U.O. No. 2820 dated 27th August, 2021.

By order and in the name of the Governor of Goa.

*Smt. Blossom Medeira*, Director & ex officio Joint Secretary (Archives & Archaeology).

Panaji, 27th September, 2021.

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**Department of Environment & Climate  
Change**

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**Order**

No. 1-25-2010/STE-DIR/625

Read: Order No. 1-25-2010/STE-DIR/02 dated 02-04-2019.

In pursuance of Section 5 of the Right to Information Act, 2005 (hereinafter referred to as "the said Act"), and in supersession of order read above, the following officer is hereby appointed as Public Information Officer (PIO), to deal with the applications received from the public under the said Act.

1. Head Clerk,  
(Department of Environ-  
ment & Climate Change  
(DoECC) Public Information  
Officer (PIO).

2. The Director, DoECC, will be the First Appellate Authority (FAA) under the said Act, against the decision as far as Department is concerned.

3. This order is issued in accordance to the decision of the Department, conveyed vide their order No. 85-1-2016/Env/1455 dated 09-03-2020.

*Dasharath M. Redkar*, Director & ex officio Joint Secretary (DoE&CC).

Porvorim, 28th September, 2021.

**Order**

No. 1-25-2010/STE-DIR/638

In pursuance of Section 5 of the Right to Information Act, 2005 (hereinafter referred to as "the said Act"), and in supersession of the earlier order No. 1-25-2010/STE-DIR/194 dated 09-06-2020 in this respect, the following officers are hereby appointed as Public Information Officer (PIO) and Assistant Public Information Officer (APIO) for Goa Coastal Zone Management Authority (GCZMA), to deal with the applications received from the public under the said Act.

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| 1. Head Clerk,<br>(Department of Environ-<br>ment & Climate Change<br>(DoECC))           | Public Information<br>Officer (PIO).               |
| 2. Lower Division Clerk,<br>(Department of Environ-<br>ment & Climate Change<br>(DoECC)) | Assistant Public<br>Information Officer<br>(APIO). |

2. The Member Secretary, GCZMA, will be the First Appellate Authority (FAA) under the said Act, against the decision of the PIO/APIO as far as the GCZMA is concerned.

3. This order is issued in accordance to the decision of the Goa Coastal Zone Management Authority, conveyed vide their letter No. GCZMA/Work Order/19-20/01/149 dated 05-06-2020.

*Dasharath M. Redkar*, Director & ex officio Joint Secretary (DoE&CC).

Porvorim, 30th September, 2021.

**Order**

No. 1-13-05/06/STE-DIR/Part/643

In pursuance of Clause 5 of the Right to Information Act, 2005 (hereinafter referred to as "the said Act"), the following officers are hereby appointed as Public Information Officer and Assistant Public Information Officer in the Goa State Pollution Control Board (GSPCB), to deal with the applications received from the public under the said Act.

Public Information Officer	Law Officer.
Assistant Public Information Officer	Senior Law Officer.

The Public Information Officer shall be responsible for preparation and publication of information manual and its updating from time to time as per the said Act.

The Assistant Public Information Officer shall ensure that the applications received under the said Act are scrutinized and submitted to the Public Information Officer for decision so as to furnish the relevant information to the applicant as per the said Act, on issues pertaining to the Goa State Pollution Control Board (GSPCB).

The Member Secretary, Goa State Pollution Control Board (GSPCB), will be the first appellate authority under this Act against the decision of the Public Information Officer/Assistant Public Information Officer as far as the Goa State Pollution Control Board (GSPCB), is concerned.

This order is issued in accordance to the correspondence/decision of the Goa State Pollution Control Board (GSPCB).

By order and in the name of the Governor of Goa.

*Dasharath M. Redkar*, Director & ex officio Joint Secretary (DoE&CC).

Panaji, 30th September, 2021.

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**Department of Labour**
**Notification**

No. 28/2/2021-Lab/Part-III/448

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 19-08-2021 in Ref. No. IT/112/07 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Maya Pednekar*, Under Secretary (Labour) (Link).

Porvorim, 21st September, 2021.

IN THE INDUSTRIAL TRIBUNAL AND  
LABOUR COURT

GOVERNMENT OF GOA  
AT PANAJI

(Before **Ms. Bela N. Naik**, Hon'ble Presiding  
Officer)

Ref. No. IT/112/07

Workmen,  
Rep. by The National Worker's  
Union,  
Tivim Industrial Estate,  
Karaswada, Mapusa-Goa. ... Workmen/Party I  
V/s



1. M/s Sunny Enterprises (Contractor), 64, Cunchelim, Mapusa-Goa. ... Employer/Party II(1)	AWARD  (Delivered on this the 19th day of the month of August of the year 2021)  By Order dated 12-11-2007, bearing No. 28/33/ /2005-LAB/1119, the Government of Goa in exercise of powers conferred by Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.
2. M/s National Industrial Corporation Limited Workers' Union, Tivim Industrial Estate, Karaswada, Mapusa-Goa. ... Employer/Party II(2)	
Workmen/Party I represented by Ld. Adv. Shri Vijay Palekar.	"(1) Whether the action of M/s Sunny Enterprises, contractor of M/s National Industrial Corporation Limited, Tivim Industrial Estate, Karaswada, Mapusa, Goa, in terminating the services of the following 31 workmen with effect from 26-12-2003, is legal and justified?"
Employer/Party II(1) and Employer/Party II(2) proceeding ex-parte.	

Sr. No.	Name	Designation	Experience
01.	Keshav B.	Maintenance Work	2 ½ years
02.	Sanjay Naik	D. M. Operator	3 years
03.	Laximkant Naik	Operator	3 years
04.	Chandrashekar Parab	Blending work	3 years
05.	Nitin Parab	Outdoor duty	3 ½ years
06.	Rama Bagkar	Electrician	4 years
07.	Santosh Kalangutkar	D. M. Operator	3 years
08.	Umesh Parsekar	Helper	3 years
09.	Sangita Salgaonkar	Labelling work	4 years
10.	Anusuya Narse	Gum Machine Operator	4 years
11.	Rekha Amre	Labelling work	3 years
12.	Manisha Saterdekar	Labelling work	2 years
13.	Shital Pednekar	Labelling work	4 years
14.	Sharad Kambli	Labelling work	4 years
15.	Sharmila Satoskar	Labelling work	4 years
16.	Kanchan Bhishi	Labelling work	4 years
17.	Bhanudas Shivji	Ceiling Operator	3 ½ years
18.	Vijay Govekar	Brushing work	3 ½ years
19.	Amar Chodankar	Checking work	3 ½ years
20.	Asmita Ambekar	Checking work	3 ½ years
21.	Santoshi Korgaokar	Checking work	4 years
22.	Shaby Parab	Ceiling work	3 ½ years
23.	Naresh Parab	Filling Operator	3 ½ years
24.	Dhaktu Parsekar	Sealing Operator	4 ½ years
25.	Lawrence Dias	Sealing Operator	4 years
26.	Ravi Sawant	Office Boy	3 ½ years
27.	Devanand Pednekar	Driver	3 ½ years
28.	Selina	Sweeper	4 years
29.	Sadanand Naik	D. M. Operator	4 ½ years
30.	Sangita Kerkar	Bottle Washing	4 years
31.	Manju Ali	Helper	1 year

## 2) If not, to what relief the workmen are entitled?"

2. Upon receipt of the reference, it was registered as IT/112/2007 and registered AD notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim Statement at Exb. 23

and Party II filed a Written Statement at Exhibit 24.

3. In short, the case of the Party I is that the present reference refers to the dispute between them and the Employer wherein 31 workmen were dismissed from service after having worked for the

period as mentioned in the column of their schedule along with their names and designation. The said workers were refused work by the Management of National Industrial Corporation Limited deliberately from 26-12-2003 and were told that their services have been terminated without giving any reasons, and that the workmen who have put in more than 4 years of continuous service without any break. The Party II(2) is in the business of manufacturing liquor products for defence personnel for the State of Kerala and Tamil Nadu and the Factory is situated at Tivim Industrial Estate, Karaswada, Bardez-Goa and is in this business since more than 15 years.

4. The Party I states that the workers were unionized themselves and this was intimated to the Management of Party II(2) by letter dated 18-08-2003 and on 11-08-2003, a charter of demands was served on the Management for better service conditions and wage rise. The engagement of Party I workmen through M/s Sunny Enterprises is an act of fraud committed by M/s National Industrial Corporation Limited to deprive the Party I of the production available to them under the Labour Legislations in connivance with M/s Sunny Enterprises, and that the same was only a mode to wriggle out from the clutches of the special statutes, and that on commencement of the factory production for about a year, the Party I were paid wages directly by M/s National Industrial Corporation Ltd. M/s Sunny Enterprises was introduced after about a year and the appointment of Contractor, M/s Sunny Enterprises and the execution of the contract is sham and bogus contractor which is appointed by M/s National Industrial corporation Limited, Party II (2) namely Sunny Enterprises, Party II (1) with the sole object of depriving the Party I of the protection and of the benefits that would flow to them as regular employees of M/s National Industrial Corporation Limited. The introduction of M/s Sunny Enterprises as a Contractor is an artificial creation of an intermediary between the Party I and M/s National Industrial Corporation Limited with the sole object of depriving the Party I of their legitimate rights available to them under the Labour Laws and there exists Employer--employee relationship between the Party I and M/s National Industrial Corporation Limited.

5. The Party I submits that the 31 workers who are called as contract workers by the Management under the Contract Labour (Regulation and Abolition) Act, 1970 are not the contract workers of Party II (1) as claimed by the Management but they are all permanent and regular workmen of Party II

(2). All these workmen are working on main and important production jobs continuously and their jobs are perennial in nature and all these workmen have completed more than 240 days of continuous and uninterrupted service without any break in service and some of them have even completed more than 480 days and therefore the services of the above workmen cannot be dispensed with without resorting to Section 25-F of the Industrial Disputes Act, 1947. The main reason for removing these workmen are mainly by way of victimization as well as due to the formation of the Union by the workmen and as the wages are meager and the Employer was not paying the minimum wages to some of the workers and hence they submitted the charter of demand to the Management and in order to get justice, the Union raised the dispute vide Charter of Demands before the Assistant Labour Commissioner, Mapusa-Goa and the matter was in conciliation. The Party I further submits that on receipt of the knowledge of the formation of the Union, the Management started harassing the workers who became the members of the Union and from the next day, all the workmen who were the members of the Union were not allowed to resume the duty from 26-12-2003. That again the refusal of employment to the said 31 workers who were the members of the union, the Union raised an industrial dispute as a protest before the Assistant Labour Commissioner, Mapusa wherein the issue could not be resolved and the conciliation ended in failure.

6. The Party I states that at the time of their termination, the Charter of Demands of the workmen were pending before the Appropriate Authority and the Party II(2) has not obtained the permission of the Appropriate Authority nor the application u/s 33 of the I. D. Act which was filed before the Appropriate Authority. Party I states that the Party II(2) has violated the provisions of Section 33 of the I. D. Act as the matter of Charter of Demands is pending before the Appropriate Authority and therefore the termination without the approval of this Tribunal is illegal, unjustified and bad in law as the Employer has not followed the principles of natural justice and as such their termination is illegal and bad in law and hence, the Party I is entitled to re-instatement with full back wages and continuity of service. Hence, it is prayed that it may be declared by this Tribunal that the termination is bad, illegal, improper and unjustified and to direct the Employer to reinstate all the above workmen with full back wages and continuity in service and award the cost as deemed fit.

7. As against the above pleadings the Party II (1) has not filed any Written Statement nor contested the present reference and Written Statement has been filed by Party II (2) and in the Written Statement it is their objection that the present reference made to this Tribunal is illegal, invalid and not maintainable and needs to be rejected as at no point of time either on 26-12-2003 or any other date, the Company terminated the services of any of the 31 workmen which position according to them is clear from the Order of Reference dated 12-11-2007 as there was no employer-employee relationship between the Company and the above named workmen at any point of time and therefore the question of impleadment of the Company as a Party to the present reference is itself illegal and bad in law.

8. It is further stated that all the 31 workers were at all times the employees of the Contractor and as such, the employer-employee relationship existed between the contractor and the said 31 workmen and therefore the real dispute if any is/was confined between the said contractor and the said 31 workmen. The termination of the services of the said 31 workmen w.e.f. 26-12-2003, if any was carried out by the Contractor which is clear from the Order of Reference dated 12-11-2007. Therefore, this reference is to be adjudicated only between the workmen and the Contractor and is liable to be rejected against them.

9. The Party II(2) is a Company registered under the Companies Act, 1956 having its Factory situated at Tivim Industrial Estate, Karaswada, Mapusa-Goa having its registered office at New Delhi and it is engaged in the manufacture of Indian Made Foreign Liquor (IMFL) and they are responsible for distribution of the said products to the defence forces of Government of India by the employment of workers directly and indirectly i.e. to the Contractors. It is stated that under Agreement dated 01-04-2000 arrived at between the Company on one hand and the Contractor above named represented by its Proprietor, Shri Sunil Narvekar on the other hand, the Company had engaged the Contractor in connection with the work of packing, bottling, filling of Indian Made Foreign Liquor (I.M.F.L.) loading and unloading of the products manufactured by the Company on contract basis for an initial period of 1 year commencing from 01-04-2000 to 31-03-2001. It is stated that as per the terms and conditions of the said Agreement, the said Agreement was extendable for a further period depending upon the performance of the Contractor and accordingly, after the expiry of the initial period

from 01-04-2000 to 31-03-2001, the said agreement was renewed for the period of one year each from 01-04-2001 to 31-03-2002 and thereafter from 01-04-2002 to 31-03-2003 and lastly from 01-04-2003 to 31-03-2004. The other relevant agreed terms and conditions of the said Agreement(s) were as under:

*"... 2. That the Company shall reimburse to the Contractor labour charges for Loading, Unloading, Filling, Packing, Bottling etc. of IMFL as per the chart enclosed herewith duly agreed upon by both the parties.*

*3. That the Contractor shall provide sufficient number of labourers and Supervisors for expeditious loading and unloading of the trucks at the Company premises at D-2/40, Tivim Industrial Estate, Karaswada, Mapusa.*

*4. That the Contractor shall carry out the following jobs:*

- a) Unloading of packing material including empty bottles, Seals, Boxes, Mono-Cartons and other materials from the trucks and shifting them to the respective Stores.*
- b) Shifting of empty bottles from Bottle Store to Bottle Washing Section.*
- c) Shifting of Cartons, Mono-Cartons, Seals, Labels, Tapes and Adhesive etc. from the Store to the Bottling Hall.*
- d) Shifting of packed boxes from the Bottling Hall to the Finished Goods Godown.*
- e) Loading of packed cases in trucks for dispatches.*
- f) Removal of broken glass bottles and other wastage/breakage from the Washing Section and Bottling Hall.*
- g) If there is no loading and unloading, the labour may be utilized for house-keeping and other jobs as required by the Company.*
- h) Washing of bottles.*
- i) Sealing of bottles.*
- j) Filling of bottles.*
- k) Labeling and carton packing.*

*5. That the Contractor agrees to provide extra manpower of labourers if required to complete the work in time.*

*7. That the Contractor will be responsible for payment of wages and other Statutory Dues including PF, ESI, BONUS, GRATUITY etc. to all the persons employed by him for Loading, Unloading, filling, packing and bottling operations at the Company's Unit at Tivim Industrial Estate. Documentary evidence of payment of statutory liabilities will be submitted to the Company within the*



*stipulated period. The Company will in no way, be liable to pay any claim whatsoever other than monthly bills for services rendered by the Contractor as detailed above.*

8. *That the Contractor undertakes to get his employees insured under the E.S.I. Act and also undertake to pay minimum wages as notified by the Government of Goa from time to time, the contractor will get himself registered as per Labour Laws applicable.*
9. *That the Contractor will get the necessary P.F. number to ensure timely payment of employees and Contractor's contribution and will submit the documents to the Company.*
11. *That it is specifically understood by both the Parties that the agreement herein-above does not create any right of the Contractor on any property of the Company and/or any right on the part of the employees of the Contractor to claim any benefit or employment of the Company. This agreement does not create any relation of master and servant between the Company and the Contractor's employees.*
18. *That the Contractor shall observe all the formalities and obligations required under Central and State Government Act such as Payment of Minimum Wages as applicable from time to time, Contract Labour (Regulations and Abolition) Act, 1970, Employees Provident Fund Act, Food Adulteration Act, Standard Weight & Measurement Act, Industrial Act and would be responsible in case of any injury caused to any workman of any damage to the company's plant due to his or her worker's negligence.*
19. *That either Party may terminate this Agreement by giving one months' prior notice in writing to the other Party without prejudice to the rights arising out of this Agreement..."*

10. The Party II (2) stated that pursuant to the Agreement as aforesaid, the Contractor engaged 31 workmen above named in connection with the work undertaken by him under the Agreement as aforesaid and at all times the said 31 workmen were working under the supervision and control of the Contractor above named. It is further stated that at times during the operation of the Agreements, the salary of the said 31 workmen was at all times paid and said 31 workmen were looked after in all respect by the said Contractor. Party II (2) further submitted that as is clear from the terms and conditions of the Agreement dated 01-04-2000 and subsequent Agreements entered into between the Parties as aforesaid, there was no privity of

contract or otherwise of whatever nature between the Company and the said 31 workmen and/or the Union. Party II (2) further stated that the Contractor was covered under the provisions of the E.S.I. Act, 1948 and E. P. F. & M. P. Act, 1952 and was granted Code numbers 32-2-78-95 and GOA/110397 respectively for complying with the provisions of the said Acts in relations to the workers engaged by him and accordingly the Contractor was deducting and depositing the contributions under the respective Acts in the respective code numbers allotted to him.

11. The Party II(2) submitted that for the purpose of carrying out the business activities efficiently and with economy, by indirect employment i.e. by or through a contractor, the Contractor had obtained Registration Certificate under No. CLE/CL-R-441 from the Office of the Registering Officer i.e. the Labour Commissioner at Panaji, Goa, as required under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and Rules thereunder. It is further submitted that the Contractor had obtained requisite Licence under No.CL/Goa-1250 from the Office of the Licensing Officer, i.e. the Labour Commissioner at Panaji, Goa as required under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and Rules thereunder in respect of the engagement of the said 31 workmen in the establishment of the Company. It is stated that the Contractor had been engaging the workmen, whose names are mentioned in the Order of Reference from the date of engagement as a contractor by the Company under Agreement dated 01-04-2000 as aforesaid and none of the said workmen had been in employment with the Company at any time prior to the said date.

12. The Party II (2) stated that, though, the relationship between the Company and the Contractor was that of Principal Employer and a Contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and Rules thereunder, however for the purpose of securing compliance by the Contractor of the terms and conditions of the Licence in respect of the workmen, the said relationship with sole consideration of carrying out the contract work by the Contractor with the workmen on mutually agreed terms and conditions contained in the Agreement dated 01-04-2000 arrived at between the Parties and its subsequent renewals thereof.

13. The Party II (2) submitted that in the month of June, 2003 i.e. during the tenure of the Agreement, all the 31 workmen resorted to slowing



down production including the stoppage of production from time to time and thereafter unilaterally, arbitrarily and without any justification resorted to illegal strike on and from 15-09-2003 to 29-09-2003. Further, thereafter all the 31 workers slowed down the production by producing an average of 250-300 cases instead of average production of 800 cases, thereby causing heavy financial losses to the Company and the said non-production resulted in disruption in supply of goods to the Canteen Stores Department which caused huge losses to the Company besides suffering damage to their reputation. It is further stated that on account of slow down and strike and in order to ensure that regular production activities were carried on for maintaining regular supply of their products, Company was constrained to engage a new contractor – M/s Dynamic Personnel Bureau for performing the same work as performed by the said Contractor. They further submitted that on account of the slow-down and strike and consequent losses and shame to their reputation, the Company was constrained to issue a letter/notice under No. NICL/G/SS/701 dated 29-11-2003 to the Contractor, inter alia giving him 30 days' notice informing its intention to terminate the Agreement dated 01-04-2003 as per clause 19 of the said Agreement.

14. The Party II(2) contended that thereafter, on 24-12-2003 i.e. during the notice period, all the said 31 workers suddenly and unilaterally stopped the work of production and damaged the critical machinery of the Company lying in the premises before leaving the premises later that day in order to completely stop the production activities and as such there was no production from 24-12-2003 onwards. It is further stated that all the said 31 workers indulged in threatening and were misbehaving with workers of the other Contractor –M/s. Dynamic Personnel Bureau thereby obstructing them from performing their duties. In view of this, the Company addressed a letter/notice dated 26-12-2003 to the Contractor, inter alia setting out in detail the aforesaid illegal activities and further informing that on account of illegal and unlawful activities resorted by his workers, the Company has suffered huge losses besides irreparable damage to the reputation of the Company and that in the said circumstances they were left with no other alternative but to terminate the Agreement dated 01-04-2003 in their interest and accordingly required all the said 31 workers to approach their Employer i.e. Contractor for further instructions. In the circumstances, it is stated that in view of termination of the said Agreement, there

was no question of the said 31 workers working with the Company on and from 25-12-2003 onwards and further stated that the Company is not aware as to the action taken by the Contractor in relation to his said 31 workmen subsequent to the termination of Agreement dated 01-04-2003 by the Company. Hence, it is prayed that the present reference be rejected against them holding that the workmen/Union are not entitled to any reliefs as prayed.

15. Based on the above mentioned pleadings my Learned Predecessor has framed the Issues at Exh. 26 and pursuant to the amendment made to the pleadings an additional issue came to be framed at Exh. 34 by my Learned Predecessor and the same are as follows:

- (1) *Whether the Party I proves that the termination of the services of 31 workmen by Party II(1) w.e.f. 26-12-2003 is illegal, unjustified and malafide?*
- (2) *Whether the Party I proves that the termination of their services is in violation of Section 33 of the Industrial Disputes Act?*
- (3) *Whether the Party I proves that they are entitled for reinstatement in services with full back wages and continuity in services with all other consequential benefits?*
- (4) *Whether Party II(2) proves that the reference is not maintainable as there is no Employer-Employee relationship between them and Party I?*
- (5) *What Order? What relief?*

1) *Additional issue:*

- (1) *Whether the Party I proves that there exists employer-employee relationship between the Party I and Party II(2) since appointment of Party II(1) as contractor is sham and bogus?*

16. In the course of evidence, the Party I examined its witness Shri Sadanand Naik and produced on record a copy of letter dated 10-08-2003 addressed to Party II(2) at Exh. 37, a copy of letter dated 11-08-2003 addressed to Party II(2) at Exh. 38, copy of letter dated 10-09-2003 addressed to ALC, Mapusa at Exh. 39, a copy of letter dated 10-09-2003 addressed to ALC, Mapusa at Exh. 40, a copy of letter dated 10-09-2003 addressed to Party II(2) at Exh.41, a copy of letter dated 16-09-2003 addressed to ALC at Exh. 42, a copy of letter dated 18-09-2003 addressed to ESI Corpn. at Exh. 43, a copy of letter dated 18-09-2003 addressed to P. F. Commissioner at Exh. 44, a copy of letter dated 24-09-2003 received from Party II(1) at Exh. 45, a

copy of letter dated 26-09-2003 received from Party II(2) at Exh. 46, a copy of letter dated 30-09-2003 addressed to ALC, Mapusa at Exh. 47, a copy of letter dated 30-09-2003 addressed to ALC, Mapusa at Exh. 48, a copy of letter dated 08-10-2003 addressed to ALC, Mapusa at Exh. 49, a copy of letter dated 09-11-2003 addressed to Party II(2) at Exh. 50, a copy of letter dated 09-11-2003 addressed to ALC at Exh. 51, a copy of letter dated 09-12-2003 received from Party II(2) at Exh. 52, a copy of letter dated 26-12-2003 addressed to Party II(2) at Exh. 53, a copy of letter dated 15-01-2004 addressed to ALC at Exh. 54, a copy of letter dated 16-01-2004 addressed to ALC, Mapusa at Exh. 55, a copy of letter dated 10-02-2004 from Labour Commissioner to Party II(1) at Exh. 56, a copy of certificate of registration of trade union dated 11-02-2004 at Exh. 57, copy of failure report of the conciliation proceedings dated 28-06-2005 at Exh. 58, a copy of order dated 12-11-2007 issued by the Under Secretary (Labour) at Exh. 59, a copy of letter dated 25-06-2008 addressed to the Under Secretary (Labour) at Exh. 60, a copy of letter dated 27-06-2008 issued by Labour Department at Exh. 61, copy of minutes report dated 29-09-2003 at Exh. 62 and a copy of information report dated 11-03-2004 at Exh. 63.

Issue No. 1 & 2	... In the Negative.
Issue No. 3	... In the Negative.
Issue No. 4	... In the Affirmative.
Issue No. 5	... As per Final Order.
Addl. Issue No. 1	... Partly in the Affirmative. and partly in the negative.

#### REASONS

##### *Issue No. 1 & 2:*

17. Issue No. 1 and 2 are discussed together as they are covered under common evidence being interconnected and also for the sake of convenience. The Party I examined one workman Shri Sadanand Naik in support of their case and he has mentioned in his Affidavit-in-Evidence the detailed facts of their case and in support of it he has produced various documents from Exh. 37 to 63 and I have perused all these documents in deciding the instant case.

18. That according to this witness he was employed with Party II i.e. the Employer, National Industrial Corporation Limited as DM Operator even before the commencement of the Factory operations and along with him there were other 31 workers including himself whose names he has mentioned in his Affidavit in Evidence were employed with the Party II whose designation and experience in years are also mentioned in detail. He has stated that all the 31 workers including himself were

refused work by Party II w.e.f. 26-12-2003 and they were orally informed about the termination of their services and no reasons were given for the termination. Admittedly, the Factory of Party II is situated at Tivim Industrial Estate which is conducting its business operations for the past 19 years and it is in the business of manufacturing liquor products for defence personnel of the State of Kerala and Tamil Nadu.

19. The present order of reference dated 12-11-2007 refers to whether the action of Party II(1), M/s Sunny Enterprises, the contractor of M/s National Industrial Corporation Limited situated at Tivim Industrial Estate, Karaswada, Mapusa in terminating the services of 31 workmen w.e.f. 26-12-2003 is legal and justified and based on this the issue No. 1 and 2 which are framed are in the nature of burden casted upon the Party I to discharge the same.

20. Though according to this witness he was employed by Party II(2) even before the commencement of the factory operations but if one goes to his cross-examination, it is very clear that he has failed to discharge the burden of issue No. 1 and 2. That in the opening line of his cross-examination Shri Sadanand Naik stated that he was employed by Party II(2) as DM Operator in the year 1999 or 2000, but admitted that he does not have any Appointment Letter or Wage Slip issued by Party II(2) to prove that he was employed by Party II(2). This goes to show that this witness failed to prove that he was employed or paid by Party II(2).

21. Further he has stated that initially PF and ESI contributions were deducted by Party II(2) and thereafter the said amount was refunded by the Company, but further admits that he does not have any documents in support of this fact. Therefore, from the own admission of this witness, it stands proved that there is no document on record to prove that he was appointed, paid by Party II(2) and the PF and ESI contributions were deducted by Party II(2). Further he stated that they never worked under the Contractor, M/s Sunny Enterprises nor Sunny Enterprises who is Party II(1) employed their services and that they were orally informed by one Shri K. T. Sunil and Suman of Party II(2) orally that their services were terminated.

22. Now coming to the documents produced by this witness, it is seen that none of these documents from Exh. 37 to 63 shows that they were employed by Party II(2) and the date of employment is not reflected in any of the said documents. The first document produced by this witness is the letter

dated 10-08-2003 addressed to Party II(2) wherein Party II(2) has been informed that the workmen have formed their local Union known as National Industrial Corporation Limited Workers' Union which document is at Exh. 37. The next document is Exh. 38 which is a copy of letter made to Party II(2) stating the charter of demands by the Union of Party I. Exh. 39 is the copy of the letter dated 10-09-2003 made to the Assistant Labour Commissioner, Mapusa-Goa by the Workers' Union stating the illegal and malafide lockout made by the Party II(2). Exh. 40 is the copy of the letter dated 10-09-2003 made to the Assistant Labour Commissioner by the workmen union and so also Exh. 41 is the copy of the letter made to the Party II(2) stating the illegal and unjustified lockout resorted by Party II(2). None of these documents mentions that the workmen were appointed by Party II(2) but moreover in the Written Statement Party II(2) has clearly mentioned that vide Agreement dated 01-04-2000 arrived at between the Company on one hand and the Contractor represented by its proprietor Shri Sunil Narvekar on the other hand, the Company had engaged the Contractor in connection with the work of packing, bottling, filling of IMFL, loading and unloading of the products manufactured by the Company on contract basis for an initial period of one year commencing from 01-04-2000 to 31-03-2001. This goes to show that Party II(2) had entered into an agreement with Party I in respect of the nature of the work to be handled as mentioned above. Therefore, it does not lie in the mouth of this witness to say that they were not knowing about the said agreement arrived at between the Party II(1) and Party II(2) which is dated 01-04-2000 and according to this witness their services were terminated from 26-12-2003 which is three years subsequent to the execution of the agreement dated 01-04-2000 and it is also mentioned in the Written Statement that this agreement was renewed lastly from 01-04-2003 to 31-03-2004.

23. In the Written Statement the relevant terms and conditions of the said Agreement are mentioned in detail and this witness has mentioned in the Claim Statement and so also in his Affidavit in Evidence that they were informed orally about their termination but has not specified who informed them about the termination, but in his cross-examination said Sadanand Naik has clearly mentioned that Shri K. P. Sunil and Suman of Party II(2) orally informed them that their services were terminated.

24. In the Written Statement Party I has mentioned that the said Agreement was made between the Company, Party II(2) on one hand and

the Contractor represented by Shri Sunil Narvekar on the other hand. Further reading the cross examination, this witness was shown the minutes of the discussion dated 29-09-2003 which document is at Exh. 62 and he admitted his signature on the same at point 'A' and clearly admitted by stating that "it is true that it is mentioned in the para 1 of the said minutes that the 23 workmen who were on the rolls of the Contractor M/s Sunny Enterprises shall report to their duties w.e.f. 30-09-2003 at 9.00 a.m. as usual and that the Union/workmen agreed to report their duties as mentioned above". This goes to show that this witness along with the other 23 workmen on the own admission of this witness have admitted that all the 23 workmen were on the rolls of the Contractor M/s Sunny Enterprises who is Party II(1). Therefore, again the allegations of this witness that the said contract is bogus and sham cannot be accepted because he has admitted that their names were on the rolls of the Contractor M/s Sunny Enterprises. Said Sunny Enterprises/Party II(1) who is a Contractor engaged by Party II(2) and this fact was within the knowledge of all the 23 workmen including this witness as further he admitted in cross that he was a part of the said 23 workmen. I have perused Exh. 62 which clearly shows that this is a document of minutes of discussion held between M/s Sunny Enterprises, contractor of M/s National Industrial Corporation Ltd., Mapusa-Goa and their workmen represented by the National Industrial Corporation Limited Workers' Union, Tivim Industrial Estate. The contents of Exh. 62 are self-explanatory wherein in clause 1 it is clearly mentioned that it was agreed between the Parties that the 23 workmen who are on the rolls of the Contractor, M/s Sunny Enterprises shall report to their duties w.e.f. 30-09-2003 at 9.00 a.m. as usual. Therefore by this document it is not proper and fair on the part of the said workmen to say that they were refused work from 30-09-2003 they were asked to report to the duties.

25. Further it is the contention of this witness that they were told that if they do not sign on the said settlement, they will not be employed by the Company. This defence taken by the workmen is without the support of any documentary evidence nor any witness has been examined to prove that all the said 23 workmen were forced to sign on Exh. 62/ the settlement. This witness has also admitted that they did not file any complaint nor made any letter that they were forced to sign the minutes at Exh. 62 because, if any workman was really forced on Exh. 62, it was quite natural on their part to file any complaint to that effect which



is admittedly not done by any of the workmen for the reasons best known to their knowledge. Though again it is the allegation of Party I that the Agreement of Party I through M/s Sunny Enterprises is a fraud committed by Party II(2) and the appointment of the Contractor M/s Sunny Enterprises and the execution of the contract is sham and bogus is also not proved by Party I and moreover, he has admitted in cross-examination that the workers did not raise any dispute alleging that the contract between Party II(1) and Party (2) were sham and bogus as the workers were never employed by the Contractor. The very execution of the settlement arrived at between all the Parties to the present reference clearly proves and establishes that all these workmen were employed by the Contractor and therefore they have signed on the said settlement and merely making an allegation that the said contract between Party I and Party II is a sham and bogus, is not maintainable as Exh. 62 proves that these workmen attended the said meeting with the Contractor and were asked to join to their duties w.e.f. 30-09-2003 and moreover, the workmen have not raised any dispute alleging that the contract between Party I and Party II is sham and bogus. In fact, this witness has not produced any documents to show that they were employed by Party II(2). And as such, the execution of the said contract made between Party I and Party II was very much within the knowledge of the workmen and therefore they attended the said meeting vide Exh. 62.

26. It is also a burden casted by issue No. 2 that the termination of their services is in violation of Section 33 of the I. D. Act. By the above provision of law, it is clear that during the pendency of any conciliation proceedings before the Conciliation Officer or before a Labour Court or a Tribunal in respect of an industrial dispute no Employer shall dismiss, discharge or punish any workmen for any misconduct unless the express permission in writing of the Authority before which the proceeding is pending is obtained and in this case Party I states that their termination is in violation of Section 33 of the I. D. Act as the matter of Charter of Demands is pending before the Appropriate Authority and therefore the termination is without the approval of this Tribunal and as such it is illegal, unjustified and bad in law but in order to prove this, this witness has not produced any documents and moreover Exh. 58 is produced which is the copy of the Failure Report of the conciliation proceedings dated 28-06-2005. Admittedly, the conciliation has failed and therefore the present reference arose. This witness has produced copy of

the letter dated 11-08-2003 mentioning the Party II(2) about their Charter of Demands but failed to prove that they were employed by Party II(2) and admittedly, their services were terminated on 26-12-2003.

27. There is no single document produced by this witness to show his/their appointment was made by Party II(2) and moreover, it was within his/their knowledge about the execution of the contract made by Party II(2) with Party II(1). And even if one goes through the Order of Reference, it is seen that the dispute referred to is for adjudication regarding the legality and justification of the action of M/s Sunny Enterprises, Contractor of M/s National Industrial Corporation in terminating services of 31 workmen w.e.f. 26-12-2003 which goes to show that the said M/s Sunny enterprises is the contractor of Party II(2) which is a Company and as such on 26-12-2003 there is no termination of 31 workmen by the said Company. All the said 31 workmen were the employees of the Contractor, therefore the real dispute arises between the Contractor Party II(1) and the workmen and there is no charter of demands made to Party II(1). Hence, as per the Agreement dated 01-04-2000 between Party I and Party II the contractor engaged 31 workmen who were working under the supervision and the control of the said Contractor, Sunny Enterprises. Hence, Party I failed to prove that the termination of their services is in violation of Section 33 of the I. D. Act and similarly failed to prove the burden of issue No. 1 and accordingly issue No. 1 and 2 stands answered in the negative.

28. Learned Advocate Shri Vijay Palekar for Party I has placed reliance on the authority reported in *Mapusa Municipal Council v/s Smt. Krupa Hallikar & Ors. wherein our Hon'ble High Court has held that where industrial dispute was pending in Court, the termination of service of workmen without obtaining approval of that Court is a breach of mandatory provisions of Section 33 (2) (b) of the I. D. Act and the petitioner cannot be allowed to plead about the ignorance of law and further held that there can be no justification whatsoever for the petitioner terminating the services during the pendency of the main industrial dispute without applying for approval of the Court where the main dispute was pending.* As per this citation, it was incumbent on part of the Party I to prove that their services were terminated without obtaining the approval of the Court and the Party I has failed to prove the same either by way of any documentary evidence nor examined any witness to that effect. There is no dispute about the settled position of

law but the Party I has not led any sufficient evidence and has merely made all the allegations in air. The Party I himself failed to prove that they were employed by Party II(2) and vide Exh. 62 it is abundantly clear that the joint discussion was held between all the Parties and there is nothing on record to show that their services were terminated illegally by the Contractor on the contrary, it is also mentioned on Exh. 62 that the Management has resorted to illegal and unjustified lockout w.e.f. 20-09-2003 pursuant to which the settlement was arrived at. It is also seen that the charter of demands was submitted to Party II(2) by registered A/D post/hand delivery which is dated 11-08-2003 at Exh. 38 pursuant to which also the settlement has taken place between the Parties. Exh. 45 refers to the letter sent by the Contractor M/s Sunny Enterprises to Party I about their illegal and unauthorized strike from 15-09-2003 till date.

#### *Issue No. 3*

29. Since Party I failed to prove issue No. 1 and 2 they are certainly not entitled for reinstatement in service with full back wages and continuity in service with all other consequential benefits as Party I did not lead any evidence to prove that they were appointed by Party II(2) and it is Party II(1) who illegally terminated their services. Hence issue No. 3 stands answered in the negative.

#### *Issue No. 4*

30. It is the objection raised by Party II(2) that the present reference is not maintainable as there is no employer-employee relationship between them as in the Written Statement Party II(2) states that the said 31 workers were at all times the employees of the Contractor and as such the employer-employee relationship existed between the Contractor and the said 31 workmen and as such the real dispute if any, is/was confined between the said contractor and the said 31 workmen. The termination of services of the 31 workmen w.e.f. 26-12-2003, if any, was carried out by the Contractor and to my mind this itself is clear from the order of reference dated 12-11-2007 which clearly states that the action of Party II(1) i.e. M/s Sunny Enterprises, Contractor of M/s Nation Industrial Corporation Limited in terminating the services of 31 workmen w.e.f. 26-12-2003 is legal and justified. Therefore, the objections raised by Party II(2) that the present reference is not maintainable against them and that no employer-employee relationship between them and Party I stands justified. Admittedly, the Party II(2) is a Company registered under the Companies Act, 1956 having its Factory at Tivim Karaswada, Mapusa,

Goa and it is engaged in the business of supplying IMFL to the defence forces of Government of India, which is by employment of workers directly and indirectly to the contractor who is Party II(1).

31. Further, the execution of the Agreement dated 01-04-2000 arrived at between the Company on one hand and the Contractor represented by its Proprietor Shri Sunil Narvekar on the other hand, the Company had engaged the Contractor in connection with the work of packing, bottling and filling of IMFL which Agreement stood renewed lastly from 01-04-2003 to 31-03-2004. The various terms and conditions of the said Agreement are self-explanatory and are also within the knowledge of all the said 31 workmen who even went further to the extent of executing Exh. 62 which is the document of minutes of discussion held between the Management of Party II(2), Contractor of Party II(2) and their workmen which is Party I. Vide Exh. 62, the workmen had admitted and consented that 23 workmen who are on the rolls of the Contractor M/s Sunny Enterprises shall report to their duties w.e.f. 30-09-2003, therefore when the execution of Exh. 62 was within the knowledge of Party I, there cannot be any employer-employee relationship between Party I and Party II(2) as admittedly, the relationship between the Company and the Contractor was that of Principal Employer and a Contractor under the provisions of the Contract Labour Act for which purpose the Contractor was engaged. It is also mentioned and agreed in the said contract, that pursuant to the said Agreement dated 01-04-2000 the Contractor engaged 31 workmen whose names are mentioned above in connection with the work undertaken by him/Contractor under the Agreement and all the said 31 workmen were under the supervision and control of the Contractor i.e. Party II(1), hence from the terms and conditions of the Agreement dated 01-04-2000 and subsequent agreements entered into between the Parties above, it is abundantly clear that there was no privity of contract of whatsoever nature between the Company and the 31 workmen and the Union. To come within the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947, a person has to establish that there is a relationship of master and servant or in other words 'Employer-Employee' relationship. Such relationship must be for a consideration. The consideration may be paid in cash or in kind and the workman concerned should be engaged in an industry. The nomenclature and the period of the appointment are also immaterial. All that a person needs to establish is that, an

Employer-Employee relationship or a master and servant relationship coupled with a consideration.

32. In the instant case, it can be easily seen that there is no employer-employee relationship between Party I and Party II(2) as to come within this relationship, it is incumbent to show the nature of the work allotted by the Employer, the master-servant relationship and the details of the workplace. In the authority of **M/s Mukand Limited and Ors v/s Dharmarajya Kamgar Karmachari reported in 2018 III CLR 883** our Hon'ble High Court has held that in every case the Court has to consider the nature of the duties actually performed by the persons engaged and the existence of right to that effect and if these duties fall within the description of the nature of the work described in Section 2(s) of the I. D. Act, the person ought to be considered as a 'workman' whatever his designation while engaging him. It is also settled law that a person to be a workman under the I. D. Act must be employed to do the work of any categories such as skilled, unskilled, technical, operational, clerical or supervisory etc. There is no such relationships shown by Party II(2) and Party I precisely. Hence, employer-employee relationship has not been established between them.

33. Even otherwise from the cross-examination of Party I, it is abundantly clear that he failed to prove that he does not have any Appointment Letter or Wage Slip issued by Party II(2) to prove that he was employed by Party II(2). He even admitted that the PF and ESI contributions were initially deducted by Party II(2) and thereafter the said amount was refunded by the Company. He has even admitted the execution of Exh. 62 and further states that he did not challenge of execution of Exh. 62. He has even admitted that on Exh. 62, the 23 workmen who were on the rolls of the Contractor M/s Sunny Enterprises shall report to their duties w.e.f. 30-09-2003 at 9.00 a.m. Hence, Party I has admitted vide Exh. 62 that they were working for Party II(1) and it is mentioned on Exh. 62 that the said 23 workmen were employed with the Contractors M/s Sunny enterprises and due to non-availability of alcohol the Management requested the workers not to attend the duties and there is also an admission that the names of the said 23 workers whose names were on the rolls of the Contractor were directed to report to their duties. The Applicant has admitted his signature on Exh. 62. Therefore, it is very much within the knowledge of the workmen that they were employed by Party II(1). Hence, from the above discussion and from the evidence on record, it is clearly established that the Party II(2) has succeeded in proving the

burden of issue No. 4 and as such the same is answered in the affirmative.

*Issue No. 5:*

34. As per the final order.

#### **Additional Issue No. 1:**

35. Pursuant to the amendment carried out to the pleadings by Party I workmen, the above additional issue came to be framed wherein there is a burden casted on Party I to prove that there exists employer-employee relationship between them and Party II(1)/Contractor. This additional issue needs to be decided in two parts as Party I has succeeded in proving that there exists employer-employee relationship between them and Party II(1) as Party I had admitted that they were employed by the Contractor/Party II(1) vide Exh. 62 and even from the evidence of Party I workmen which I have discussed in detail while deciding issue No. 4. Said issue No. 4 was answered in the affirmative because there was no employer-employee relationship between Party II(2) and Party I as Party I were employed by Party II(1)/Contractor. Hence, there exists employer-employee relationship between Party I and Party II(1). Since issue No. 4 is answered in the affirmative, the first portion of the additional issue needs to be answered in the affirmative.

36. As far as the second part of the additional issue is concerned which refers to the appointment of Party II(1) as a Contractor to be sham and bogus, this part needs to be answered in the negative for want of evidence. The Party I failed to prove in what manner the appointment of Party II(1) as a contractor was sham and bogus. Even in the cross-examination, Party I has admitted the execution of Exh. 62 and even the execution of the Agreement dated 01-04-2000 was within the knowledge of the workmen. Party I has admitted that the said 23 workers were employed by the Contractor M/s Sunny Enterprises and except mere allegations there is absolutely no documentary or any oral evidence to show in what manner the appointment of the said Contractor/Party I was sham and bogus. All the facts were within the knowledge of Party I workmen and as such they were under the direct employment of Party II(1). There is no challenge from the workmen when Party II(2) engaged a Contractor or a contract labour on 01-04-2000. Hence, the execution of the Agreement of Contract which was within the knowledge of the workmen who were already working under the said contractor, failed to prove that the said Agreement of Contract was null and void. The workmen have merely raise an objection that Party II(2) had no



permission or licence to engage a contract labour when the said Agreement was already executed on 01-04-2000 and the workmen failed to show with cogent documents that they were employed with Party II(2) between the period December, 1999 to December, 2002. Therefore, the termination of the workmen by Party II(1) cannot be held to be illegal, null and void and in violation of Section 33 of the I. ED. Act. Hence, this part of the additional issue stands answered in the negative and as such this additional issue accordingly stands answered partly in the affirmative and partly in the negative.

37. Learned Advocate Shri V. Palekar for the Party I has placed reliance on the following authorities:

- (i) **The Director, Steel Authority of India Ltd v/ s Ispat Khandan Janta Mazdoor Union in Civil Appeal No(s) 8081-8082 and 8084 of 2011** wherein the Hon'ble Apex Court has given the guidelines and the tests which are to be applied to find out whether the person is an employee or an independent Contractor in finding out whether the contract labour agreement is sham which was examined by the Apex Court in the case of **International Airport Authority of India v/s International Air Cargo Workers' Union and Anr., 2009 (13) SCC 374** wherein it was held that "*the tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*"

- (ii) **The Workmen of Best & Crompton Industries Ltd., v/s The Management of Best & Crompton Engineering Ltd., reported in 1985 1 LLJ 492;** wherein the Apex Court has discussed the provisions and definitions of Section 2(2)(b) of the I. D. Act which states as follows:

*"that a workman shall be deemed to be employed as contract labour in/or in connection with the work of an establishment when he is hired in/ or in connection with such work by or through*

*Contractor, with or without the knowledge of the Principal Employer" and further came to the conclusion that if a workman is not hired through a Contractor holding a valid license under the Act, he would be a workman employed by the Management itself and the Management must be aware that the Contractor had no valid license and that therefore, the workman could not be contract labour within the provisions of Section 2(2)(b) of the said Act.*

- (iii) **ICM Enginiring Workers Union v/s Union of India reported in 2000 7 AD(Del) 1037** wherein the Hon'ble Apex Court has discussed the provisions of Section 7 of the I. D. Act that every Principal Employer of an establishment to which this Act applies has to make an application to the registering officer for registration of the establishment meaning thereby, if the particular establishment wants to engage contract labour and to such an establishment the provisions of this Act applies, it has to get itself registered with the Registering Officer. Likewise, under Section 12 of the Act the Contractor, to whom this Act applies, has to obtain a license from the Licensing Officer under this Act and unless it has taken such a license, contractor is not permitted to undertake or execute any work through contract labour. The non-observance of Section 7 and/or 12 is penal and the erring establishment or the contractor, as the case may be, can be prosecuted.

38. I have perused all the above authorities in deciding the present case and I am in total agreement with the settled position of law but the ratios applied in all the above cases are not at all applicable to the facts of the present case for the simple reason that the Party I has not led any evidence to show that he was employed by Party II(2). In fact he has admitted that that they were working on the rolls of the Contractor of M/s Sunny Enterprises/Contractor/Party II(1) and the execution of the agreement of contract dated 01-04-2000 is also admitted by Party I and the same was in operation with no challenge to it from any of the workmen. Even there is no challenge to Exh. 62 therefore it does not lie in the mouth of the Party I to say that that the said agreement of contract is null and void and bad in law. The question of challenging the legality of the said agreement does

not arise for want of evidence when the workmen were already working for Party II(1).

## ORDER

- (i) The action of M/s Sunny Enterprises, Contractor of M/s National Limited, Tivim Industrial Estate, Karaswada, Mapusa, Goa in terminating the services of the 31 workmen with effect from 26-12-2003 is legal and justified.
- (ii) The workmen are not entitled for any relief.
- (iii) No Order as to cost.
- (iv) Inform the Government accordingly.

Sd/-  
(Bela N. Naik)  
Presiding Officer,  
Industrial Tribunal and  
Labour Court.

◆◆◆  
Department of Personnel

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Order

No. 5/1/2021-PER/2382

- Read: 1) Order No. 5/1/2021-PER/1769 dated 16-07-2021.  
2) Order No. 5/1/2021-PER/1799 dated 26-07-2021.

In continuation to the orders read in preamble, the departmental training in respect of the following officers is extended for a further period of 33 days from 09-09-2021 to 23-10-2021 as per the schedule planned by the Goa Institute of Public Administration and Rural Development, Ela, Old-Goa:-

1. Shri Sohan Ashok Uskaikar.
2. Shri Gauresh Ashok Pilgaonkar.
3. Shri Shubham M. Naik.
4. Shri Ganesh K. Barve.
5. Shri Yogiraj P. Gosavi.
6. Smt. Ashwini A. Gauns Desai.
7. Shri Girish G. Sawant.
8. Shri Sitaram G. Sawal.
9. Shri Manohar Karekar.

The link arrangements issued vide order read in preamble at Sr. No. (1) shall continue to operate with respect to the officers at Sr. No. (1) & (2) above.

None of the above 09 officers drafted for departmental training shall be sanctioned leave during the training period except under

unavoidable circumstances. Absence from training will have to be justified in writing.

Punctuality during the entire course, discipline and decorum in the Institute during the training period shall be maintained by the officers.

No errant behavior, on part of trainee, shall be tolerated during the training and if such behavior is noticed deemed fit action shall be initiated against the trainee.

By order and in the name of the Governor of Goa.

Vishal Kundaikar, Under Secretary (Personnel-I).  
Porvorim, 23rd September, 2021.

## Order

No. 6/11/2010-PER (Part)/2417

Read: Order No. 6/11/2010-PER (part)/2209A dated 03-09-2021.

In continuation to the order read in the preamble, the Government appoints the following officers as Nodal Officers in the Office of the Chief Electoral Officer with immediate effect for performing the time bound election related works in connection with forthcoming General Elections to Goa State Legislative Assembly to be held in February, 2022:-

Sr. No.	Name & designation of the Nodal officer	Subject assigned to the Nodal officer
1.	Shri Tushar T. Halarnkar Deputy Director (Admn.), Higher Education	1) Nodal Officer for Implementing of MCC. 2) Nodal Officer for Expenditure Monitoring.
2.	Smt. Nathine Araujo Under Secretary, Personnel-II.	Nodal Officer for Observers.
3.	Shri Pravind J. Gawas Vigilance Officer-IV	Nodal Officer for SVEEP (Systematic Voter's Education & Electoral Partici- pation).

The officers shall continue to hold their respective charges alongwith the additional charge of the Nodal Officer until further orders. The Nodal Officers are appointed as per the proposal received from the Office of the CEO.

The officers shall continue to draw the salary from the post held by them during their tenure as Nodal Officers.

By order and in the name of the Governor of Goa.

*Vishal Kundaikar*, Under Secretary (Personnel-I).

Porvorim, 28th September, 2021.

### Order

No. 6/13/2016-PER/2408

On the recommendation of the Goa Service Board and with the approval of the Government, the transfer and posting of the following Junior Scale Officers of Goa Civil Service is ordered in public interest:-

Sr. No.	Name and present posting of the officer	Posted as
1	2	3
1.	Shri Rajesh Azgaonkar, Deputy Collector & SDM-I, Bardez	Deputy Collector & SDM, Pernem with additional charge of SLAO, Tillari Irrigation Project.
2.	Shri Bala Korgaonkar, Assistant Director, HT&C	Deputy Director (Admn.), Goa Medical College.
3.	Shri Pravin Hire Parab, Deputy Director (Admn.), Goa Medical College	Deputy Collector & SDM, Satari with additional charge of Forest Settlement Officer, North.
4.	Shri Gurudas S. T. Dessai, Deputy Collector & SDO, Tiswadi	Deputy Collector & SDM-I, Bardez.
5.	Shri Eshant Sawant, Under Secretary, Home-II	Deputy Collector & SDM, Tiswadi.
6.	Shri Ajay Gaude, Deputy Collector (DRO), North with additional charge of Deputy Collector (Revenue), North	Deputy Collector (Revenue), North.
7.	Shri Ravishekhar Nipanikar, Deputy Collector & SDO, Pernem holding additional charge of SLAO, Tillari Irrigation Project	Deputy Registrar of Co-op. Societies (Tech.).
8.	Shri Joao B. Fernandes, Deputy Collector & SDO-II, Salcete holding additional charge of SLAO, KRC & Administrator of Comunidade, South Zone	Chief Officer, Cuncolim Municipal Council with additional charge of Forest Settlement Officer, South upon retirement of Smt. Violet Gomes.
9.	Smt. Sharmila Gaunkar, Deputy Director (Admn.), Skill Develop- ment & Entrepreneurship holding additional charge of Project Officer, DRDA, North	Deputy Collector & SDO-II, Salcete with additional charge of SLAO, KRC.
10.	Smt. Pratima J. Braganza, Assistant Commissioner of Commercial Taxes	Deputy Director (Admn.), Skill Development & Entrepreneurship
11.	Smt. Swati Dalvi, Deputy Registrar, Goa Engineering College, Farmagudi holding additional charge of Member Secretary, Rajiv Kala Mandir, Ponda	Deputy Director of Panchayats (South).



1	2	3
12.	Shri Pundalik Khorjuekar, Deputy Director (Admn.), Tribal Welfare holding additional charge of Deputy Registrar of Co-op. Societies (Tech.).	Deputy Registrar, Goa Engineering College, Farmagudi with additional charge of Member Secretary, Rajiv Kala Mandir, Ponda.
13.	Smt. Sandra D'Souza, Deputy Collector (LA), North	Deputy Collector (DRO), North with additional charge of OSD, RERA.
14.	Shri Sagar Gaude, Deputy Collector & SDM, Sanguem	Chief Officer, Ponda Municipal Council.
15.	Shri Raju Dessai, Deputy Director of Panchayats, South	Deputy Collector & SDM, Sanguem.
16.	Shri Kedar Ashok Naik, Deputy Collector & SDM, Dharbandora	Joint Director, Information & Publicity with additional charge of Deputy Director (Admn.), Art & Culture.
17.	Shri Ramesh P. Naik, Joint Director, Information and Publicity holding additional charge of Deputy Director (Admn.), Art & Culture	Deputy Collector & SDM, Dharbandora.
18.	Shri Pandurang T. Talgaonkar, Deputy Director (Admn.), Agriculture	Deputy Director (Admn.), DFDA with additional charge of General Manager GIDC.
19.	Shri Sohan Ashok Uskaikar, Deputy Director (Admn.), DFDA holding additional charge of General Manager, GIDC	Deputy Director (Admn.), Agriculture.
20.	Smt. Maya Pednekar, Under Secretary, Personnel-II holding additional charge of Under Secretary, ARD	Deputy Director, Vigilance.
21.	Smt. Nathine Stevea Araujo, Deputy Director, Vigilance	Under Secretary, Personnel-II.
22.	Shri Chandrakant Shetkar, SLAO (PWD) and SLAO, National Highway	Deputy Collector (LA), North with additional charge of SLAO (PWD) and SLAO, National Highway (NHAI).
23.	Dr. Geeta Nagvenkar, Administrator of Comunidade, Central Zone	Deputy Director (Admn.), PWD upon retirement of Shri A. V. Redkar with additional charge of Adminis- trator of Comunidade, Central Zone.

Shri Pritidas Gaonkar, Under Secretary (Home-I) shall hold the additional charge of Under Secretary (Home-II).

Shri Shashank Thakur, Under Secretary, Goa State Information Commission shall hold the additional charge of Project Officer, DRDA (North).

Smt. Amalia Pinto, Under Secretary (Industries & Labour) shall hold the additional charge of Under Secretary, ARD.

Shri Tipanna Maddimani, Administrative Officer, Hospicio Hospital, Margao shall hold the additional charge of Administrator of Comunidade, South Zone.

Smt. Seema Salkar @ Veera Nayak, Deputy Collector (Elections), North shall hold the additional charge of Deputy Director (Admn.), Tribal Welfare.

Shri Sachin Desai, OSD in Imagine Panaji Smart City Development Ltd. shall hold the additional charge of Deputy Commissioner of State Taxes.

Shri Tulsidas S. Karanzalkar, Under Secretary (HT&C) shall hold the additional charge of Assistant Director (HT&C).

Shri Tushar Halarnkar, Deputy Director (Admn.), Higher Education with additional charge of Under Secretary, Higher Education shall also hold the additional charge of Deputy Director (Development) Higher Education.

The officers at Sr. No. 18 & 19 shall take over the charges upon culmination of departmental training period of Shri Sohan Uskaikar.

The officers posted against deputation posts shall be governed by standard terms of deputation as amended from time to time.

The above officers shall complete their handing over and taking over process within 05 working days and submit compliance.

By order and in the name of the Governor of Goa.

*Vishal C. Kundaikar*, Under Secretary (Personnel-I).

Porvorim, 27th September, 2021.

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